



CITY OF HAYWARD AGENDA REPORT

Meeting Date 06/20/02
Agenda Item 1

TO: PLANNING COMMISSION

FROM: Lorna Carranza, ASLA, Landscape Architect

SUBJECT: Text Change Application PL – 2002-0042 - Initiated by the Planning Director – Repeal Chapter 10, Article 15, of the Hayward Municipal Code, “Preservation of Trees” Sections 10-15.10 through 10-15.30 and Introduce Ordinance, “Tree Preservation” Sections 10-15.10 through 10-15.30.

RECOMMENDATION:

It is recommended that the Planning Commission review the proposed ‘Tree Preservation’ Ordinance and provide recommendations to staff.

DISCUSSION:

At the Planning Commission meeting on April 11, 2002, revisions to the Tree Preservation Ordinance (Ordinance) were introduced. (See attached staff report.) The comments presented during the public hearing raised issues that needed further clarification and definition. The Planning Commission continued this item to allow staff to meet with the interested members of the public to further explore and refine various aspects of a revised Ordinance. Staff evaluated the comments received at the Planning Commission meeting, in letters and phone calls, and from the meeting held with the Chamber of Commerce. After reviewing all the comments, staff believes that the changes to the original Ordinance were so extensive that repeal of the existing ‘Preservation of Trees’ Ordinance and replacement with a new Ordinance would be more efficient. The comments received from the public were either incorporated into this new Ordinance and/or are addressed below. The majority of the comments that were received were incorporated into the draft replacement Ordinance. The revisions are represented in red.

Impact on Single Family Property

- The current Ordinance governs trees on single family residential lots only when these properties can be further subdivided to create additional home sites. The only additional impact on single family lots under the new Ordinance is that the removal or cutting of trees that were required as part of a tract or other Conditions of Approval of discretionary acts would require a Tree Removal and Cutting permit and the replacement of that removed tree. For example, if the approval of a tract requires that certain trees be planted along the street frontage or significant existing trees be saved, subsequent property owners would be obliged to maintain those trees and they would not be able to remove

them without an approved Tree Removal and Cutting permit. If they were removed, they would be required to plant a replacement tree. If they did not obtain a permit or replace the removed tree, the property owner would be subject to penalty.

Several members of the community have expressed concern that the proposed revised Ordinance would not protect large, significant trees on small single-family properties. Other than trees required as a Condition of Approval, and as noted above, the proposed Ordinance does not address single-family parcels that have trees of significant size, such as mature oaks, black walnuts or other native trees. Therefore, no tree removal permits would be necessary for an individual single-family homeowner to fell such trees.

Staff agrees that preservation of significant trees that help to define or contribute in a positive way to single-family neighborhoods is important and that protection of these trees is worthy of consideration by the Planning Commission. Nevertheless, the extent to which the City should impose its oversight on the landscaping of existing single-family home sites is a policy issue with valid arguments on both sides. In addition, the City does not have the staffing to police the large numbers of small, single-family parcels that are not covered by landscape conditions. Enforcement of tree removal on such individual parcels would need to be on a complaint basis only. If the Planning Commission believes that protection of significant trees on existing single-family parcels is an important element of maintaining neighborhoods, the Commission should recommend to City Council that these trees also be protected under the proposed Ordinance.

- Because some property owners prefer to trim their own trees, the City's Landscape Manager is initiating a program that will teach property owners how to properly trim trees. City staff will also provide handouts for single-family homeowners showing the best practices for tree trimming. Those who attend the classes could qualify to do major pruning on the Protected Trees in their yards. As noted below, routine maintenance is not regulated under the new Ordinance.

No Permit for Routine Maintenance

- The proposed Ordinance now clarifies that routine maintenance of trees including the removal of dead or broken limbs, removal of watersprouts, crossed limbs or branches under 1 inch in diameter would not require a permit. However, this work must be done to International Society of Arborists standards and does not include major pruning or the removal of large live limbs.

Protected Trees

- The proposed Ordinance defines the trees that would be "Protected." These are trees that are required by the zoning ordinance or other trees on commercial, industrial, or multi-family properties which are 8 inches or greater in diameter at 54 inches above grade. An 8" diameter tree is generally at least 10 to 15 years old and may in some cases be as much as 100 years old depending on the species of tree. Some slow-growing California native trees are listed as protected at a smaller 4-inch size since they may

already be 25 or 30 years old or even older. One suggestion was that all trees should reach a diameter of 8 inches to be protected. Because some trees are very slow growing, staff disagrees and the Ordinance was not changed to include this suggestion.

- For all Protected Trees, the removal of a large portion of the tree canopy, large live limb removal, and relocation or removal of Protected Trees, will require a permit. Removal of a Protected Tree will also require the replacement of the Protected Tree with one of similar size or value wherever possible or upsizing other trees being planted on the site.
- One suggestion was to eliminate the requirement for “like size, like kind” when a tree is removed. Staff does not believe it is acceptable for a 15-gallon tree to replace a mature tree that may have taken 50 to 100 years to reach its size. Although the new tree, with proper care, might someday reach a size to provide a similar amenity to the tree that was removed, it is unlikely to happen within a reasonable time frame. The intent of the Ordinance is to protect the values that existing trees provide. Where it is necessary to remove a tree, the lost amenities should be replaced as quickly and fully as possible. This is best done by replacement with multiple trees or larger size trees.

Pruning

- It was suggested that all pruning by a licensed landscape contractor, whether or not a certified arborist, should be allowed without a permit. Pruning by landscape contractors who are not specifically trained in ISA tree care standards is one of the primary causes of inappropriate pruning. Most tree care companies have certified arborists on staff to supervise workers that might not be certified. Staff believes that a permit, and consequent City review of tree work, should remain a requirement in the proposed Ordinance in order for landscape contractors who do not have a certified arborist on staff to do major pruning of trees.
- Language was added to allow the City to keep a list of certified arborists who agree to abide by International Society of Arboriculture (ISA) standards in cutting or pruning trees in the City. This list would be provided to anyone who requested information about who was qualified to cut or prune trees and to anyone who requested a Tree Removal or Cutting permit.

Other Issues

- A requirement intended to protect nestling birds when pruning or removing trees was suggested, but since the City would be unable to adequately enforce this type of requirement and migratory birds are already protected by Federal guidelines, this was not included in the proposed Ordinance.
- A request was made to eliminate the proposed additional 1 foot beyond the dripline for fencing around the tree during construction. Staff believes the 1 foot provides the necessary space for the contractor to place the fence without intruding into the ‘Dripline’ of the tree, and that the requirement for the fence to be non-movable should

remain in the Ordinance to prevent fences from being relocated during construction. The requirement that the City Landscape Architect approve the removal of the fence is necessary to assure that the protective fence remains in place during the entire construction phase.

Penalties for Non-Compliance

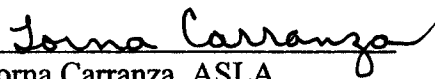
- The proposed Ordinance requires that when Protected trees are removed without permits, a fine equal to the value of the tree plus a replacement tree be imposed. It was suggested that this requirement is excessive and that the fine either be eliminated or capped. Staff believes the proposed fine to be reasonable, and courts of law have upheld similar fines. A cap on the amount of the fine would make the most valuable trees less valuable and more likely to be callously removed.
- The proposed revised Ordinance allows the imposition of fines for violations of the ordinance and appeal of that fine to the Planning Director. A member of the community requested that individuals be able to appeal the imposed fines to the Planning Commission and City Council. As with other penalty procedures in the Municipal Code, fines assessed at the administrative level that remain unpaid become the subject of an annual lien hearing before the City Council, at which time any party believing the fine to be inappropriately levied may appeal to the City Council.

Where appropriate, the proposed changes address as many of the concerns raised at the previous meeting as possible as well as comments received subsequent to the hearing. Although in some cases there were conflicting points of view, staff believes the proposed new Ordinance would be in the best interest of the community. The most recent revisions to the Ordinance are in red.

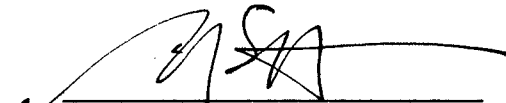
PUBLIC NOTICE:

Notice of this workshop was advertised in the Daily Review, sent to all recognized homeowners and neighborhood associations, former members of neighborhood task forces, the Chamber of Commerce, the local Board of Realtors, local developers, local landscape architects, arborists, landscape contractors, landscape maintenance companies, and Hayward Area Recreation Park District.

Prepared by:


Lorna Carranza, ASLA
Landscape Architect

Recommended by:


for Dyana Anderly, AICP
Planning Manager

Attachments:

- A. Draft Ordinance
- B. Planning Commission Report and Minutes of the April 11, 2002 meeting.



CITY OF HAYWARD AGENDA REPORT

Planning Commission

Meeting Date 04/11/02

Agenda Item 1

TO: PLANNING COMMISSION

FROM: Lorna Carranza, ASLA, Landscape Architect

SUBJECT: Text Change Application PL – 2002-0042 - Initiated by the Planning Director
– Request for an Amendment to Chapter 10, Article 15, of the Hayward
Municipal Code, “Preservation of Trees” Sections 10-15.10 through 10-15.30.

RECOMMENDATION:

It is recommended that Planning Commission recommend that the City Council adopt the Negative Declaration and approve the amendments to the “Preservation of Trees” Ordinance subject to the attached findings.

DISCUSSION:

There have been numerous occasions when street trees, trees that were required to be planted as part of a commercial, industrial, or residential development were removed, decapitated, or pruned in such a way that the trees were effectively destroyed. Also, there have been instances of indiscriminate removal of trees on land where future development was anticipated. When trees are removed, damaged, and destroyed, it can have a profound effect on the visual perception of the City. This type of destruction is what the original “Preservation of Trees” Ordinance was established to prevent. However, it has become increasingly clear that the Ordinance needs further clarification, more specificity about which trees should be protected, establishment of a means for determining the value of trees to be protected, and a more effective methods of dealing with violations.

At a City Council work session in February 2000, staff was directed to revise the Preservation of Trees Ordinance and to add fines for damaging or destroying trees. The project was delayed until the recent hiring of a City Landscape Architect. The attached recommended Ordinance clarifies the City’s preservation stance, adopts a method of determining value associated with protected trees that is consistent with fees imposed in other Bay Area cities, and establishes fines that will underscore the value of the trees that contribute to the value of our neighborhoods and the City’s image. The proposed Ordinance amendments recognize the importance of preserving significant trees and at the same time acknowledge the development rights of property owners. Additions to the Ordinance are noted by highlighted text; deletions

are noted by strikeouts. The major issues of the proposed revised Ordinance are discussed below.

- The definition section (Section 10-15.11) is proposed to be augmented significantly in order to clarify the meaning of certain words as used in the context of the Ordinance.
- Other sections (10-15.12 through 14) were added to further define the kinds and sizes of trees to be protected according to accepted standards, to require the property owners to protect their trees and to define the City's liability.
- Section 10-15.20 incorporates new wording regarding determining the value of trees for establishing replacement costs.
- The process and information required on the permit for tree removal and tree trimming are outlined in Section 10-15.21.
- The amendments standardize the requirements and criteria for evaluating trees in conjunction with a tree removal application (Sections 10-15.22 and 23). For example, in cases involving removal of more than three trees, a certified arborist must provide information on the general health and form of the trees at issue.
- The current Ordinance addresses trees on properties of single-family homeowners only when their properties can be further subdivided to create additional home sites. This is unchanged from the present ordinance. However, the proposed amendments expand its authority over all single-family parcels in that trees required as part of a tract or other conditions of approval of discretionary acts would be protected. For example, if approval of a tract requires that certain trees be planted or significant trees be saved, subsequent property owners would be obliged to maintain the trees and to not remove them without an approved tree removal permit. Otherwise, the property owner would be subject to penalty. As proposed, this Ordinance does not address single-family parcels that have trees of significant size, such as mature oaks, black walnuts or other native trees. Therefore, no tree removal permits would be necessary for an individual single-family homeowner to fell a mature tree of significant size and worth unless installed as a requirement of the tract or otherwise required to be maintained as a condition of a development approval.
- The appeal process has been modified in cases where individuals seeking a tree removal permit or who are subject to fines for unauthorized tree removal disagree with the findings of the City's Landscape Architect. The appeal process mirrors that for other discretionary permits, i.e., to the Planning Commission and, upon further appeal, to the City Council.

- Sections 10-15.26 through 29 outline penalties, collections, injunctive relief, and liens. The value of the trees will be determined by standards set by the International Society of Arboriculture. These are the same standards used by other local municipalities. Violations of this Ordinance will also be a misdemeanor, which can be criminally prosecuted. The revised Ordinance allows the City to lien properties if necessary to achieve compliance with the Ordinance. These penalties are intended to discourage individuals from felling trees in order to make room for future development or to dissuade individuals from disregarding the importance of a significant tree to their street, their neighborhood, and their community.

CONCLUSION:

Adoption of this Ordinance would apply Citywide and create a performance standard applicable to all City properties, except for the single-family parcels mentioned above. Exceptions have also been provided for emergency conditions. Street trees within the public right-of-way would continue to be maintained under the current "Street Tree Ordinance."

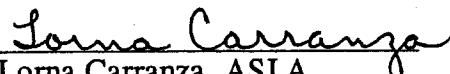
ENVIRONMENTAL REVIEW

In accordance with the California Environmental Quality Act (CEQA) Guidelines, it was determined that this project would not have a negative impact on the environment and a negative declaration has been prepared.


PUBLIC NOTICE:

Notice of this hearing was advertised in the Daily Review, sent to all recognized homeowners and neighborhood associations, former members of neighborhood task forces, the Chamber of Commerce, the local Board of Realtors, local developers, local landscape architects, arborists, landscape contractors, landscape maintenance companies, and Hayward Area Recreation District. The City has received several phone calls from the public and the Chamber of Commerce regarding this issue. About half supported additional restrictions on tree removal and trimming and half objected to the proposed amended ordinance in that they believe it limits property rights. The Chamber of Commerce expressed support for the concept of revising the Ordinance. A letter received from Mr. John Kyle, is attached wherein he objects to portions of the Tree Preservation Ordinance.

Prepared by:


Lorna Carranza, ASLA
Landscape Architect

Recommended by:


Dyana Anderly, AICP
Planning Manager

Attachments:

- A. Findings of Approval of Amendment
- B. Draft Ordinance
- C. Negative Declaration and Environmental Checklist
- D. Letter from Mr. John Kyle

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**MEETING**

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m. by Chairperson Halliday, followed by the Pledge of Allegiance.

ROLL CALL

Present: COMMISSIONERS Zermeno, Williams, Sacks, Caveglia, Bogue, Thnay
CHAIRPERSON Halliday
Absent: COMMISSIONER None

Staff Members Present: Anderly, Carranza, Conneely, Emura, Reyes, Weisbrod

General Public Present: Approximately 12

PUBLIC COMMENT

There were no public comments.

AGENDA

1. **Text Change Application PL-2002-0042 – Initiated by the Planning Director** - Request for an Amendment to Chapter 10, Article 15, of the Hayward Municipal Code, "Preservation of Trees" Sections 10-15.10 through 10-15.30
2. **Appeal of Planning Director Denial of Variance Application No. PL-2001-0478 – Dan and Yvette Martin (Applicants/Owners)** - Request for Reduction of a Rear Yard From 10 feet to 7 feet and the Reduction of the Interior Side Yard From 10 feet to 6 feet 6 inches to Allow a Multi-Purpose Room and Bathroom Addition. The Property is Located at 31275 Hershey Way in a RS (Single-Family Residential) Zoning District
3. **Administrative Use Permit No. 00-150-20 – Elias Motaz, Pinnacle Stone (Applicant)/Robert S. Figone Trust (Owner) – Victoria Pope (Trustee)** – Request for Temporary Outdoor Storage, Display and Manufacturing. The Property is Located at 4321 Breakwater Avenue in an (I) Industrial Zoning District

PUBLIC HEARINGS

1. **Text Change Application PL-2002-0042 – Initiated by the Planning Director** - Request for an Amendment to Chapter 10, Article 15, of the Hayward Municipal Code, "Preservation of Trees" Sections 10-15.10 through 10-15.30

Planning Manager Anderly explained that there has been a lot of interest in protecting trees on private property as well as the text change. She noted that if a tract has been conditioned for specific trees, it is suggested that these trees be protected. She added that planter strips are not a part of this tree ordinance.

Landscape Architect Carranza explained that the Tree Preservation Ordinance was revised at the direction of the City Council. She said the present ordinance does not aid in preservation of the trees in the City. The revision will include mechanisms to preserve older, established trees. She noted that large trees give a sense of establishment. She added that the Ordinance would also address severe pruning. She noted that the Ordinance, which now requires permits to remove trees, would also include permits for trimming and pruning trees.

Commissioner Caveglia commented on the old trees in his area and wondered how these trees could be preserved.

Landscape Architect Carranza explained that there should be preservation of "Heritage trees" even when they are on single family private property. This Ordinance does not include those.

Commissioner Caveglia asked for consideration of preservation of these trees.

Commissioner Williams asked about pruning neighbor's trees when they hang over his property. He was told there would be nothing prohibiting his doing so in this Ordinance. He then expressed concern about the damaged trees in the area. He also inquired as to how to background and information on protected trees would be acquired. He was told the stipulations for the subdivisions are available.

Commissioner Zermefio described PG&E as one of the worst pruners in the area. He was told that the City is hoping to discuss the problems with the Company. The City of Hayward is asking for a yearly request from them for tree pruning.

Commissioner Bogue asked about the exceptions to the Ordinance.

Planning Manager Anderly added that this is to protect trees in the larger subdivideable lots, commercial and industrial sites only.

Chair Person Halliday asked for further information on the permit costs, as well as the value of trees as defined by the International Society of Arboriculture (ISA).

Landscape Architect Carranza discussed the existing cost of the \$66 permit which is proposed for trimming, also the process of determining value based on species, size, health and location and the pruning of trees by ISA standards. She noted that most tree trimmers are licensed.

The public hearing opened at 8:07 p.m.

Elmer Kriewalt, Hayward, displayed pictures of some of the pruning in the area in his neighborhood. He noted that it looks better to have trees that are supposed to be smaller under power lines. He said he would like to see a copy of the ordinance as well.

**REGULAR MEETING OF THE PLANNING
COMMISSION, CITY OF HAYWARD, Council
Chambers****Thursday, April 11, 2002, 7:30 P.M.
777 "B" Street, Hayward, CA 94541**

Maryann Jacquez, Hayward, spoke in favor of the ordinance. She suggested replacing trees and penalties when not complied with.

Scott Raty, Chamber of Commerce, urged this item to be continued for further information and comments from the public. He said he was in favor of trees, however, the City staff cannot keep up with removing the dying trees in the area. He commented that he had many questions about the Ordinance and noted that there are property rights questions.

Tom Evans, Hayward, discussed taking up the issue of cutting trees in greenbelts. He talked about protecting the heritage trees, like those on "B" Street and at the Library. He commented that many of the Oak trees in the Canyon are slow growing and still not at their potential. He would like to see many of the stands of trees protected so that if the property is developed, that the trees are left or worked out so that the developers plant trees somewhere else. He thought he would like to see the shoreline made better use of. He would like to see much of the hills land protected. He noted that taking trees down has a significant impact on the neighborhood. He said he would like to see more protection for trees.

Ron Barklow, Hayward, said he was bothered about the endangered species of birds that nest in the trees. He asked what is being done to inspect the trees before pruning.

Landscape Architect Carranza admitted there was nothing in the Ordinance in this regard but that consideration would be given to this concern.

Mr. Barklow continued to discuss under grounding utility lines. He said he did not agree with the "No impact" since many developers have ruined the breeding grounds of birds.

William Gardner, HARD, takes care of the trees in the Parks in Hayward. He commented that there are standards that should be followed. He noted that he is a consulting arborist. He said there is a need for this ordinance and he would like to work with the City on this. He said a more comprehensive plan was needed. The Hayward Parks supports any effort to protect the trees in this community.

Ron Pompalano showed photographs of the damage to trees in his neighborhood. He said 27 trees on a ridge off Campus Drive were cut down. He described many of them as Heritage trees. There were 10 Municipal Code violations. The neighbors were told there was no recourse through the City. He noted that this is a common occurrence in many cities.

Marlene Teel, Hayward, said she was delighted with the Tree Preservation Ordinance. She commented that anything the City could do to preserve the trees would be appreciated.

Ronald Carden said he was pleased with the Tree Preservation Ordinance. His company prunes thousands of trees a year. He noted that to come down to City Hall to receive a permit each time

would be onerous. He commented on the definition of "Certified Arborist," in the Code. He noted that rarely do they have people tell them, they want their trees mutilated. He said removing trees wholesale was something he would not support, and added that the pruning aspect is difficult to control. He asked who would be responsible for making sure it was done right.

Commissioner Sacks qualified the burden of having to obtain a permit for each property and asked what Mr. Carden would propose. He suggested perhaps developing a list of those who are qualified in the area and then would be eligible to do so with some streamlined or simplified permit process.

Commissioner Williams said homeowners would have to pay the extra money for a permit in addition to what it already costs to get the tree trimmed.

Chairperson Halliday suggested that the need to prune trees might be necessary for the health of the trees and this might be added into the Ordinance. Mr. Carden agreed that to prune is for structural development. He added that there are situations when the standards may not apply because of conflicts with structures or how a tree was previously trimmed.

Mimi Bauer, Fairway Park Neighborhood Association, commented that this does not pertain to the median. She commented on fines relative to not replacing trees that have been removed. Their neighborhood Association discussed root damage to the sewers and leakage, and voiced concern about broken sewage lines polluting the groundwater. She asked about the permit process for trees planted near a private swim club. She was told that a permit would be required but might be used for the full year, although Landscape Architect Carranza noted that the law, at this point, says it would be for only 60-days.

Gill Russell, suggested that hedges would be popular as a result of passing this Ordinance, since many people might not want to bother with planting or caring for trees. He said the trees add a lot to the life of the community. He pointed to the trees in European Cities and how much they add to the ambience of the community. He commented that a stricter Ordinance would greatly add to the City of Hayward.

The public hearing closed at 8:52 p.m.

Chairperson Halliday suggested the Commission not act at this meeting since there was so much information to assimilate.

Commissioner Bogue agreed and said he had quite a few questions. He asked whether the trees in planter strips are protected. He was told that trees planted as part of an original subdivision and were required as part of it, would be protected, if they are essentially six inches across. If removed, it would be required to be replaced.

Chairperson Halliday asked whether the street trees were required in all subdivisions. She was told that in some subdivisions they were required, but in most of the older subdivisions, they were not. Chairperson Halliday suggested that it might be productive to have more information in making a decision regarding the Ordinance, as well as the types of trees planted in older developments.



Commissioner Thnay said he would like to see this item continued. He said this is a great first step but would like to see it much more comprehensive. He suggested developing a manual to give to homeowners, or possibly having the City use this as a marketing tool by demonstrating what is right and what is wrong.

Commissioner Zermeño commented that he, too, agreed to continue the item since there are still too many gaps in the plan.

Commissioner Sacks **moved**, seconded by Commissioner Thnay, to continue the item. She added that two items to consider would be the length of permit, and that perhaps a list of approved companies might be developed.

Commissioner Williams urged more education for the residents on this issue. He then asked how staff will enforce this and whether more staff will be needed.

Commissioner Bogue said that, although it makes sense to have a preferred list, businesses need to be held liable rather than the homeowners.

Commissioner Caveglia commented that the list concept might sound good but there are big companies who butcher trees.

Chairperson Halliday commented that this Ordinance is saving property owners from unlicensed tree trimmers. She agreed with the list concept as a guide for homeowners, she liked the idea for the City producing information for residents.

Commissioner Williams said he was leery of the City having liability in putting out a list for homeowners.

Commissioner Bogue suggested a disclaimer be printed on the list of tree contractors so that homeowner's realize their responsibility in the end.

The **motion passed unanimously** to be brought back at a future date.

2. **Appeal of Planning Director Denial of Variance Application No. PL-2001-0478 – Dan and Yvette Martin (Applicants/Owners) - Request for Reduction of a Rear Yard From 10 feet to 7 feet and the Reduction of the Interior Side Yard From 10 feet to 6 feet 6 inches to Allow a Multi-Purpose Room and Bathroom Addition. The Property is Located at 31275 Hershey Way in a RS (Single-Family Residential) Zoning District**

Consulting Project Planner Weisbrod described the property and the neighborhood. He noted that the rear yard requirement is 20 feet, or reduced to 10 feet as long as the addition does not cover more than 20 percent of the required rear yard. He added that the applicant is proposing to reduce